

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA,) 3:00-cr-00058-HDM-RAM
12 Plaintiff,) 3:00-cr-00109-HDM-RAM
13) ORDER
14 VS.)
15 HUMBERTO MAGANA ARIAS,)
16 Defendant.)

17 The defendant's 28 U.S.C. § 2255 motion seeks relief based on
18 *Johnson v. United States*, 135 S. Ct. 2551 (2015) (ECF No. 293 in 3:00-
19 cr-58; ECF No. 61 in 3:00-cr-109). In *Johnson*, the Supreme Court held
20 that the residual clause in the ACCA's definition of "violent felony"
21 is unconstitutionally vague. Defendant was not charged or sentenced
22 under the ACCA. Rather, the defendant's two offenses were grouped
23 together for sentencing and his guideline range was driven up for his
24 applicable drug offenses.

25 On March 6, 2017, the United States Supreme Court determined that
26 *Johnson* does not apply to the Guidelines. *Beckles v. United States*,
27 580 U.S. – , 137 S. Ct. 886 (Mar. 6, 2017). As defendant’s claim for
28 relief depends on *Johnson* applying to the Guidelines and the Supreme

1 Court has held *Johnson* does not apply to the Guidelines, defendant is
2 not entitled to any relief. Defendant's § 2255 motion seeking relief
3 under *Johnson* (ECF No. 293 in 3:00-cr-58; ECF No. 61 in 3:00-cr-109)
4 and his motion to file a reply (ECF No. 299 in 3:00-cr-58; ECF No. 64
5 in 3:00-cr-109) therefore must be and hereby are **DENIED**.

6 The standard for issuance of a certificate of appealability
7 calls for a "substantial showing of the denial of a constitutional
8 right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28
9 U.S.C. § 2253(c) as follows:

10 Where a district court has rejected the constitutional
11 claims on the merits, the showing required to satisfy
12 §2253(c) is straightforward: The petitioner must
13 demonstrate that reasonable jurists would find the
14 district court's assessment of the constitutional
15 claims debatable or wrong. The issue becomes somewhat
16 more complicated where, as here, the district court
17 dismisses the petition based on procedural grounds. We
18 hold as follows: When the district court denies a
habeas petition on procedural grounds without reaching
the prisoner's underlying constitutional claim, a COA
should issue when the prisoner shows, at least, that
jurists of reason would find it debatable whether the
petition states a valid claim of the denial of a
constitutional right and that jurists of reason would
find it debatable whether the district court was
correct in its procedural ruling.

19 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*,
20 221 F.3d 1074, 1077-79 (9th Cir. 2000). The Supreme Court further
21 illuminated the standard for issuance of a certificate of
22 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The Court
23 stated in that case:

24 We do not require petitioner to prove, before the
25 issuance of a COA, that some jurists would grant the
petition for habeas corpus. Indeed, a claim can be
26 debatable even though every jurist of reason might
27 agree, after the COA has been granted and the case has
28 received full consideration, that petitioner will not
prevail. As we stated in *Slack*, "[w]here a district
court has rejected the constitutional claims on the
merits, the showing required to satisfy § 2253(c) is

straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."

4 *Miller-El*, 537 U.S. at 338 (quoting *Slack*, 529 U.S. at 484). The court
5 has considered the issues raised by defendant with respect to whether
6 they satisfy the standard for issuance of a certificate of appeal and
7 determines that none meet that standard. The court will therefore deny
8 defendant a certificate of appealability.

9 In accordance with the foregoing, Defendant's § 2255 motion
10 seeking relief under *Johnson* (ECF No. 293 in 3:00-cr-58; ECF No. 61
11 in 3:00-cr-109) and his motion to file a reply (ECF No. 299 in 3:00-
12 cr-58; ECF No. 64 in 3:00-cr-109) therefore must be and hereby are
13 **DENIED**. The court further denies defendant a certificate of
14 appealability.

15 IT IS SO ORDERED.

16 DATED: This 7th day of July, 2017.

Howard D. McKibben

UNITED STATES DISTRICT JUDGE